

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

AZTEC MUNICIPAL SCHOOLS
BOARD OF EDUCATION,

Plaintiff,

vs.

Civ. No. 08-00183 MV/WDS

HENRY KING, DORA KING, and
DOUG MOELLER,

Defendants.

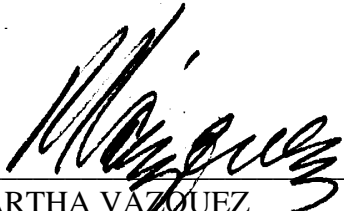
MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on Plaintiff Aztec Municipal Schools Board of Education's Motion for Default Judgment, filed May 9, 2008, [Doc. No. 11]. In its motion, Plaintiff seeks entry of default by the clerk pursuant to Rule 55(a) and entry of a default judgment by the clerk pursuant to Rule 55(b)(1) or by the Court pursuant to Rule 55(b)(2). Plaintiff's motion, however, is procedurally defective. Rule 55 requires two steps before entry of a default judgment. First, pursuant to Rule 55(a), the party seeking a default judgment must have the clerk enter the default by submitting the required proof that the opposing party has failed to plead or otherwise defend. *See* 10A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 2682 (3d ed. 2007) ("Prior to obtaining a default judgment under either Rule 55(b)(1) or Rule 55(b)(2), there must be an entry of default as provided by Rule 55(a)."). Second, pursuant to Rule 55(b), the moving party may seek entry of judgment on the default under either subdivision (b)(1) or (b)(2) of the rule. Pursuant to local rule, a motion for default and a motion for default judgment must be filed separately. *See* Administrative Order 92-88

(requiring all practitioners before the Court to submit a separate pleading for each matter upon which a ruling is sought).

IT IS THEREFORE ORDERED that Plaintiff Aztec Municipal Schools Board of Education's Motion for Default Judgment, filed May 9, 2008, [Doc. No. 11], is hereby **DENIED** without prejudice as procedurally defective.

DATED this 23rd day of May, 2008.



MARTHA VAZQUEZ
Chief District Court Judge

Attorneys for Plaintiff:

Jacquelyn Archuleta-Staehlin
Sarah Piltch

Attorney s for Defendants:

No appearances entered